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TC 3600

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In re Application of :
Larry W. Bell et al. : DECISION ON PETITION
Application No. 09/373,038 : TO WITHDRAW THE
Filed: August 12, 1999 : HOLDING OF ABANDONMENT
For: SLED SYSTEM FOR MOUNTING
PARKING BRAKE AND SHIFT ASSEMBLIES

This is a decision on the applicant's renewed petition to withdraw the holding of abandonment, filed in the United States Patent and Trademark Office (USPTO), on July 16, 2004.

The petition is **GRANTED**.

A review of the file record reveals that a non-final Office action was mailed to applicant on February 13, 2001. Since a response was not received, the application was held abandoned, and a Notice to that effect was mailed on September 21, 2001.

There is a strong presumption that Office communication properly addressed and delivered to the United States Postal Services; was in fact delivered to the addressee. An allegation that the Office communication was not received must be overcome by a showing that it was not received.

The showing required to establish non-receipt of an Office communication must include all of the following requirements:

- (1) A statement from the practitioner stating the Office communication was not received by the practitioner;
- (2) A statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and
- (3) A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The docket records indicated above must include a copy of the list of all responses in the practitioner's office with the due date of May 13, 2001. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G.53 (November 16, 1993). The petition filed January 24, 2002 failed to meet requirements above based on a mailing date of February 13, 2001.

Applicant's renewed petition provides a copy of the docket record showing all actions due by practitioner's office at and around the due date of May 13, 2001. This evidence is acceptable proof of non-receipt as provided by 1156 OG 53.

The application is being forwarded to the Supervisory Legal Instruments Examiner with instructions to withdraw the abandonment, return the application to pending status and to redate and remail the Notice of Allowability and Notice of Allowance and Issue Fees Due of September 24, 2001 based on the reasoning in the case of *Delgar v. Schuyler*, 172 USPQ 513.



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SNM/vdb: 8/31/04